

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB1103

Hearing Date: Thursday February 25, 2010
Committee On: Judiciary
Introducer: Flood
One Liner: Adopt the Abortion Pain Prevention Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Christensen, Coash, Lathrop, Lautenbaugh, Rogert
Nay:	3	Senators Ashford, Council, McGill
Absent:		
Present Not Voting:		

Proponents:	Representing:
Sen. Mike Flood	Introducer
Ferdinand Salvacion, M.D.	National Right to Life
Thomas Grissom, M.D.	National Right to Life
Teresa Stanton Collett, J.D.	Self
Sean Patrick Kennedy, M.D.	Self
Anita Showalter, D.O.	Self
Mary Spaulding Balch	National Right to Life Committee; Nebraska Right to Life
Anne Marie Bowen	Nebraskans United for Life
Al Riskowski	Nebraska Family Council
Greg Schleppenbach	Nebraska Catholic Conference

Opponents:	Representing:
Leslie Griffin	Self
Caitlin Borgmann	Self
Kyle Carlson	Planned Parenthood of the Heartland
Darla Eisenhauer, M.D.	Self
Rosemary Esseks	Nebraska Psychological Association
Tim Mosher	Self
Tiffany Campbell	Self
Sue Ellen Wall	Pro-Choice Coalition
Rev. Fritz Hudson	Unitarian Church of Lincoln

Neutral:	Representing:
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Summary of purpose and/or changes:

Legislative Bill 1103 would adopt the Abortion Pain Prevention Act. The bill provides definitions for the following terms: abortion, attempt to perform or induce an abortion, gestational, fertilization, medical emergency, reasonable medical judgment, physician, probable gestational age, unborn child or fetus, and woman.

The bill provides legislative findings concerning fetal development and ability to experience pain, abortion methods used

at and after 20 weeks, anesthesia, and the state's interest in reducing or preventing actions that inflict pain.

The bill requires a determination of probable gestational age of the unborn child to be made before an abortion is performed except in a case of medical emergency. The bill also prohibits abortions to be performed when the probable gestational age of the unborn child is 20 or more weeks unless the woman has a medical condition which necessitates an abortion to prevent her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function. A claim or diagnosis that the woman will engage in conduct resulting in her death or irreversible physical impairment will not constitute an exception to the twenty week abortion ban. If an abortion is performed after twenty weeks gestational age the physician must terminate the pregnancy in such manner as provides the best opportunity for the unborn child to survive unless such a method would pose greater risk of the woman's death or irreversible physical impairment.

The bill requires physicians who perform or attempt to perform an abortion to report to the Department of Health and Human Services the following information:

- The probable gestational age including the method and basis for determination;
- The basis of the emergency if no determination of gestational age was made;
- The basis for exception to 20 week ban;
- The method of abortion and
- The basis for exception to the survival requirement

The department must issue a public report on the information from the reports by June 30 each year. The bill provides for penalties for failure to report timely, accurate or complete information.

Under the bill, any person who intentionally or recklessly performs or attempts to perform an abortion in violation of the Act is guilty of a Class IV felony. No penalty can be assessed against the woman.

The bill provides that (1) any woman upon whom an abortion has been performed in violation of the Act, (2) the father of the unborn child who was the subject of such abortion, or (3) the grandparent of such an unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of the Act for actual damages. The bill also provides a cause of action for attempted violations of the Act as well as injunctive relief to prevent the provider from further violations. In addition, this section addresses attorney's fees.

The bill provides for the preservation of the anonymity of any woman upon whom an abortion has been performed or attempted in civil or criminal proceedings brought under the Act.

The bill provides for severability if any part of the Act is found to be unconstitutional.

The bill provides the suspension of a physician's license for between three and eighteen months for violations of the requirement to determine the gestational age of the fetus or for failure to submit timely, accurate or complete report to DHHS.

Explanation of amendments:

Committee Amendment AM 2063 would replace the green copy of the bill. The amendment contains the original provision of LB 1103 with the following changes:

1. The Act is renamed the Pain-Capable Unborn Child Protection Act.
2. References to gestational age are changed to post-fertilization age throughout the bill.
3. Legislative findings in section 3 (4), (5) and (6) are stricken and replaced with findings about observations of responses to pain and the use of pain medication on unborn children. Another finding asserts that Nebraska has a compelling state interest in protecting the lives of the unborn from the state at which they are capable of feeling pain.
4. The amendment would add an exception to the ban on abortions after 20 weeks post-fertilization age for abortions necessary to preserve the life of an unborn child.
5. The amendment would strike the ability of a grandparent to maintain an action against the person who performed the

abortion in an intentional or reckless violation of the Act for actual damages.

6. Language was stricken that would limit the discretion of the medical board to discipline professionals under the Act.

Brad Ashford, Chairperson